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**DECISION**



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**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-205291

DATE: May 18, 1982

MATTER OF: Indiana Bell Telephone Company

**DIGEST:**

Court's dismissal with prejudice of a complaint presenting the same issues as a pending protest, precludes GAO from considering the protest since a dismissal with prejudice constitutes a final adjudication on the merits.

Indiana Bell Telephone Company protests the award of a contract to Northern Telecom, Inc. under request for proposals (RFP) No. DAEA08-81-R-0037, issued by the Department of the Army. The solicitation sought proposals to install and maintain dial telephone switching systems at three military installations, including Fort Benjamin Harrison, Indiana. Northern was awarded the Fort Benjamin Harrison contract on September 30, 1981, based on its low evaluated cost. Indiana Bell contends that the Army failed to evaluate certain maintenance costs provided for in Northern's proposal, and that had these costs been evaluated, Indiana Bell, not Northern, would have been the low offeror. Indiana Bell thus concludes that the award to Northern was improper. Because the issues in this protest have been the subject of a judicial decision, we dismiss the protest.

On March 5, 1982, while its protest was pending before our Office, Indiana Bell filed suit in the United States District Court for the District of Columbia, Indiana Bell Telephone Co. v. John O. Marsh, et al., Civil Action No. 82-0651, seeking a temporary restraining order (TRO) and a preliminary injunction prohibiting further performance of the contract until our Office resolved Indiana Bell's protest. Indiana Bell also requested "such other relief, consonant with that requested above, as the court may deem appropriate." The court refused to

issue. PRO but, on March 9, held an evidentiary hearing on Indiana Bell's motion for a preliminary injunction. On March 10, after considering this testimony and written arguments, the court denied Indiana Bell's motion for a preliminary injunction and dismissed Indiana Bell's complaint.

On March 30, before our Office had acted on Indiana Bell's protest, that firm filed another suit in the United States District Court for the Southern District of Indiana, Indiana Bell Telephone Company v. United States of America; Northern Telecom, Inc., Civil Action No. IP 82-480-C. In this second lawsuit, Indiana Bell requested a preliminary injunction pending the court's final decision and a permanent injunction directing the Army to terminate Northern's contract and award it to Indiana Bell as the low offeror. The cost evaluation issue before our Office constituted one of two bases for Indiana Bell's requested relief (the second basis, involving the Service Contract Act, is not relevant here).

In a judgment dated April 26, the court dismissed Indiana Bell's complaint with prejudice. The court found, as a matter of law, that the District of Columbia court's March 10 decision was intended to, and did, operate as a ruling on the merits of the cost evaluation issue, and that relitigation of that issue was therefore barred under the doctrine of res judicata. The court specifically rejected Indiana Bell's argument that the March 10 decision went to the limited question of whether a preliminary injunction was warranted and not to the merits of Indiana Bell's complaint.

Indiana Bell now urges that we rule on the merits of its protest regarding the cost evaluation issue, since "the court's ruling was entirely based on procedural grounds," and "did not address IBT's [Indiana Bell's] contention that the Army failed to award to the low offeror." The ruling was more than procedural, however. The court dismissed Indiana Bell's complaint with prejudice,

and in so doing specifically found that the District of Columbia court had adjudicated the merits of the cost evaluation issue and had dismissed the action for lack of legal merit. In our view, the dismissal with prejudice by the Indiana District Court constitutes a final adjudication on the merits of this matter, barring further action by this Office. See Fed.R.Civ.P. 41(b); Bethlehem Steel Corporation, B-200954.2, March 12, 1981, 81-1 CPD 191; National Office Moving Company--Reconsideration, B-196282.2, May 2, 1980, 80-1 CPD 318; Maremont Corporation, B-186276, October 15, 1976, 76-2 CPD 334.

In reaching this conclusion we are mindful of Indiana Bell's position that the Indiana District court's decision is erroneous. This, of course, does not change the legal effect of the court's dismissal of Indiana Bell's complaint. If the protester disagrees with the court, it must seek redress through the appeals process, not our Office. Likewise, we see no merit in Indiana Bell's argument that the judge's references to our Office during oral arguments indicated the Indiana Court's desire that we decide the matter. The court's dismissal of Indiana Bell's complaint, in our view, was not consistent with its alleged interest in a decision from our Office; if the court were truly interested in our views, it would have so stated in its opinion.

Indiana Bell's request for a conference regarding the propriety of dismissal of its protest is denied. Since all parties have submitted clear written statements setting forth their positions on this issue, such a conference would serve no useful purpose. Waterbury Farrel, Division of Textron, Inc., B-203798, July 24, 1981, 81-2 CPD 60.

The protest is dismissed.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-205291

May 18, 1982

The Honorable Dave Evans  
Member, United States House  
of Representatives  
4th Floor Administration Building  
Indianapolis International Airport  
Indianapolis, Indiana 46241

Dear Mr. Evans:

By letter to our Office dated November 20, 1981, you expressed interest in the protest of Indiana Bell Telephone Company concerning the award of a contract under solicitation No. DAEA01-81-R-0037, issued by the Department of the Army.

Enclosed is a copy of our decision of today.

Sincerely yours,

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel

Enclosure